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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,867	09/26/2001	Michael F. Krieger	0406.0002	1618
7590	06/07/2006		EXAMINER	
Michael F. Krieger Kirton & McConkie 1800 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111			BROWN, CHRISTOPHER J	
			ART UNIT	PAPER NUMBER
			2134	
DATE MAILED: 06/07/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/963,867	KRIEGER, MICHAEL F.
	Examiner Christopher J. Brown	Art Unit 2134

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 3/27/06.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3, 5 and 9-14 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-3, 5, 9-14 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, filed 3/27/06, with respect to USC 112 first paragraph have been fully considered and are persuasive. The rejection of claims 1-8 has been withdrawn.

Applicant's arguments, see filed 3/27/06, with respect to the rejection(s) of claim(s) 1-3, and 5 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection are made.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3, 5 and 9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one

relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As per claims 1-3 the instant specification says only that “the software interface is utilized to present access to a software application”, it does not state that it is an “independent” software interface. Correction is required.

As per claims 3, and 5 the instant specification does not state that the software interface controls network access, the specification only states controlling access to an operating system or application program.

As per claim 9, the instant specification does not state that the software interface sends a message to a user of the software interface.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 recites the limitation "the user of the software interface" in line 2. There is insufficient antecedent basis for this limitation in the claim.

All claims dependent on rejected base claims are also rejected.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Subbiah US 6,035,403.

As per claims 1-2 Subbiah teaches a biometric access verification system where online biometric identification is required, (Col 5 lines 8-30). Subbiah teaches obtaining and storing a biometric profile for a user to be authorized, (Col 5 lines 8-17). Subbiah teaches a biometric acquisition device for a user to submit a biometric sample, (Col 4 line 65).

Subbiah teaches obtaining a current biometric sample from an individual attempting to gain access, (Col 5 lines 20-25). Subbiah teaches comparing the current biometric sample to a previously stored biometric sample and allowing access if the user is authorized (Col 5 lines 22-30). It is inherent that the software interface is imposed on the software application and operating system. The system's software must interface with each other to function properly.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, is rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah US 6,035,403 in view of Matchett US 5,229,764.

As per claim 3, Subbiah teaches a biometric access verification system where online biometric identification is required, (Col 5 lines 8-30). Subbiah teaches obtaining and storing a biometric profile for a user to be authorized, (Col 5 lines 8-17). Subbiah teaches a biometric acquisition device for a user to submit a biometric sample, (Col 4 line 65).

Subbiah teaches obtaining a current biometric sample from an individual attempting to gain access, (Col 5 lines 20-25). Subbiah teaches comparing the current biometric sample to a previously stored biometric sample and allowing access if the user is authorized (Col 5 lines 22-30). Subbiah does not teach access to a network. It is inherent that the software interface is imposed on the software application and operating system. The system's software must interface with each other to function properly.

Matchett teaches using biometrics to gain access to a network, (Col 3 lines 10-15, Col 8 lines 8-11).

It would have been obvious to one of ordinary skill in the art to combine the biometric system of Subbiah with the network access system of Matchett, because the biometrics would enhance network security.

Claims 5, is rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah US 6,035,403 in view of Matchett US 5,229,764 in view of Kinsella US 6,947,580 in view of Canestaro US 6,748,540.

As per claim 5, the Subbiah-Matchett combination teaches biometric acquisition and storage, (Col 4 lines 45-56).

The Subbiah-Matchett combination does not disclose reporting unauthorized access attempts, or keeping a biometric signal beyond the time necessary for the steps of comparison.

Kinsella teaches storing a biometric reading longer than the time necessary for the steps of comparison in an audit log (Col 10 lines 23).

It would have been obvious to one of ordinary skill in the art to use the log of Kinsella with the authentication system of Subbiah-Matchett because it allows an ability to detect internal fraud or other unauthorized people.

Canestaro teaches reporting a failed access attempts to an administrator for security reasons, (Col 2 lines 12-18, Col 7 lines 7-10). It would be obvious to one of ordinary skill in the art to add Canestaro's reporting failed access attempts with the Subbiah-Matchett biometric access system because it would be advantageous to have an improved method for monitoring unauthorized access attempts to a computer system for administrators, (Col 2 lines 1-10 Canestaro).

Claims 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah US 6,035,403 in view of Stevens US 7,013,393.

As per claims 9, and 11, Subbiah teaches a biometric authentication system. It is inherent that it has a software interface.

Subbiah does not teach notifying the user of inappropriate access attempts.

Stevens teaches notifying the user of an inappropriate access attempt (Col 11 lines 25-35). It would have been obvious to one of ordinary skill in the art to modify the access system of Subbiah with the reporting of Stevens because it makes the user aware that they may only have limited remaining chances for an appropriate login.

Claims 10, and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah US 6,035,403 in view of Kinsella US 6,947,580.

As per claims 10, and 12-14, Subbiah teaches a biometric authentication system. It is inherent that it has a software interface.

Kinsella teaches storing a biometric reading longer than the time necessary for the steps of comparison in an audit log, that identifies the individual attempting to user the software (Col 10 lines 23).

It would have been obvious to one of ordinary skill in the art to use the log of Kinsella with the authentication system of Subbiah because it allows an ability to detect internal fraud or other unauthorized people.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Brown whose telephone number is (571)272-3833. The examiner can normally be reached on 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jaques Louis Jaques can be reached on (571)272-6962. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher J. Brown

5/31/06

James R. Louis-Jacques
JAMES R. LOUIS-JACQUES
PRIMARY EXAMINER